

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
DOCKET NO. 3:23-cv-00013-FDW-DCK

HARDIE'S FRUIT AND VEGETABLE  
COMPANY-HOUSTON, LP, *et al.*,  
Plaintiffs,  
vs.  
BLACK TITAN FRANCHISE SYSTEMS  
LLC, *et al.*,  
Defendants.

## ORDER

THIS MATTER is before the Court on Plaintiffs' Motion for Temporary Restraining Order, (Doc. No. 2), Motion for Preliminary Injunction, (Doc. No. 3), and Memorandum in Support of Motions for Relief, (Doc. No. 12), pursuant to Rule 65 of the Federal Rules of Civil Procedure. For the issuance of a temporary restraining order without notice to the adverse party, Rule 65(b)(1)(B) of the Federal Rules of Civil Procedure requires that "the movant's attorney certify[y] in writing any efforts made to give notice and the reasons why it should not be required" (**"Rule 65 Certification"**). Plaintiff's Motions, Memorandum, and Declarations in Support of those Motions, (Doc. Nos. 2–7, 12)<sup>1</sup>, and declarations, which move this Court to issue a temporary restraining order against Defendants without written or oral notice to Defendants, do not include Plaintiffs' counsel's Rule 65 Certification. Accordingly, this Court cannot grant the extraordinary relief—the issuance of an *ex parte* temporary restraining order and preliminary injunction—

<sup>1</sup> The Court notes that while Document Number 4 is titled “RESPONSE in Support re 2 Motion for Temporary Restraining Order, 3 Motion for Preliminary Injunction by Stern Produce Company,” the actual document attached is Plaintiff Stern Produce Company, Inc.’s Corporate Disclosure Statement. (See Doc. No. 4).

Plaintiffs request. Therefore, this Court DENIES Plaintiffs' Motion for Temporary Restraining Order without prejudice to be refiled upon Plaintiffs' showing of compliance with Rule 65(b)(1)(B) of the Federal Rules of Civil Procedure.

IT IS THEREFORE ORDERED that Plaintiffs' Motion for Temporary Restraining Order, (Doc. No. 2), is DENIED without prejudice.

IT IS FURTHER ORDERED that the Court DEFERS a ruling on Plaintiffs' Motion for Preliminary Injunction. (Doc. No. 3). The parties shall TAKE NOTICE that a hearing on the pending Motion for Preliminary Injunction will take place before the undersigned on **Thursday, January 19, 2023, at 11:00 a.m.**, in Courtroom #5B of the Charles R. Jonas Federal Building, 401 W. Trade Street, Charlotte, North Carolina. Oral arguments will be limited to twenty (20) minutes per side. Plaintiffs are responsible for immediately providing notice of the hearing to each Defendant named in this action.

IT IS SO ORDERED.

Signed: January 10, 2023

  
Frank D. Whitney  
United States District Judge